

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CHARLES ALPINE #1422624                   §  
v.   §     CIVIL ACTION NO. 9:07cv188  
D. SWEETIN                                 §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Charles Alpine, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Alpine complains of an incident which occurred on July 7, 2007, in which he complained that another inmate was threatening him, and he was made to return to his cell block. He subsequently filed a grivenace asking for the name of the inmate who had threatened him, but prison officials would not tell him. He sued only the unit warden, D. Sweetin, but made no mention of Sweetin in his complaint.

On August 27, 2007, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge observed that Alpine had previously filed at least three lawsuits or appeals which had been dismissed as frivolous or for failure to state a claim upon which relief could be granted. Accordingly, under 28 U.S.C. §1915(g), the Magistrate Judge concluded that Alpine was barred from proceeding *in forma pauperis* unless he was in imminent danger of serious physical injury. Because Alpine made no such showing, nor did he pay the filing fee, the Magistrate Judge recommended that the lawsuit be dismissed.

Alpine responded to the Magistrate Judge's Report with a letter filed on September 14, 2007, which he styles as a "brief." This letter complains that the prison officials to whom he spoke were "negligent" and that negligence violates his rights under state and federal law. He makes no mention of the "three-strikes" provision, which was the basis of the Magistrate Judge's Report.

The Court has conducted a careful *de novo* review of the pleadings and records in this cause, as well as the Report of the Magistrate Judge and the letter which Alpine sent, construed as objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's *in forma pauperis* status be and hereby is REVOKED. It is further

ORDERED that this lawsuit is hereby DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full filing fee. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **1** day of **October, 2007**.



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Ron Clark, United States District Judge